

REMARKS/ARGUMENTS

Reconsideration is requested. Claims 1-11 are pending. Responsive to the Office Action of January 17, 2007, the Examiner's comments and the cited art have been noted and studied. For reasons to be set forth in detail below, it is respectfully submitted that the present application is in condition for allowance, and such action is requested.

Independent claims 1 and 10 have also been amended to recite that the floating probe "is adapted to floatably rest upon" the target site bulge (see, for example, paragraphs 0033 and 0037 of the original disclosure). Such a floating probe configuration beneficially controls penetration depth even though target site physical properties may vary (see, for example, paragraph 0033 of the original disclosure).

It is respectfully submitted that the amendments above are supported by the specification, claims, abstract of the disclosure, and drawings as originally filed, and that no new matter has been added.

Claim Rejections under 35 U.S.C. §102

The subject matter of claims 1, 2, 3, 6, 8, 9, 10, and 11 was rejected under 35 U.S.C. 102(e) as anticipated by U.S. Patent Application Publication US 2004/0127818 A1 to Roe et al. (hereinafter "Roe").

Roe, as understood, describes a bodily fluid sampling device includes an incision forming member (element 42) and a reference member (element 48) as described at, for example, paragraph 0068 of Roe. In the device of Roe, the reference member is driven toward the skin by the incision forming member and serves to flatten the skin as an incision is formed (see, for example, FIGs. 1 and 2 of Roe and paragraph 0068). Moreover, the bodily fluid sampling device of Roe includes an inner adjustment member (element 62) with a thread (element 76) that engages a groove (element 78) of the reference member (see paragraph 0064 of Roe).

Claims 1 and 10, as amended, each recite a floating probe that is adapted to "floatably rest upon" a target site bulge. Although the Office Action contends that element 82 (i.e., the contact portion of the reference member) of Roe anticipates the floating probe of the original claims, Applicants submit that the reference member of Roe does not *floatably rest upon* a target site bulge, but rather is driven toward the skin in a manner that flattens the skin (see the

discussion above). Such a driven reference member is clearly distinguished over the presently recited floating probe that rests on the target site bulge.

Applicants have noted that the current Office Action contends that FIG. 4 of Roe depicts a configuration where the reference member is disengaged from the thread (element 76) and, therefore, floating. Applicants respectfully disagree. Since FIG. 4 of Roe is a cross-sectional diagram wherein foreground and background portions of the thread are not shown, it is impossible from FIG. 4 alone to discern whether thread 76 is disengaged from the reference member or not. However, one of skill in the art would conclude that the reference member remains engaged (i.e., not floating) since (i) paragraph 0064 of Roe states that the reference member is engaged by the thread and makes no mention of any potential for disengagement; (ii) paragraph 0070 of Roe describes FIG. 4 by noting that adjustment "extends" the reference member without any mention of disengagement; and (iii) there appears to be no description in Roe of how the reference member could be re-engaged following a hypothetical disengagement.

Applicants further note that claims 1 and 10, as amended, recite that the floating probe "rests" upon the target site bulge. In both FIGs. 2 and 5 of Roe, the reference member is not resting, but rather being driving into and flattening the target site bulge. Therefore, the reference member does not anticipate or make obvious the currently recited floating probe.

For at least the foregoing reasons, Applicants respectfully submit that independent claims 1 and 10, as amended, are not anticipated or obvious over Roe. Since claims 2, 3, 6, 8, 9 and 11 depend from and further limit their respective independent claims 1 and 10, they are allowable for at least the same reasons.

#### Claim Rejections under 35 U.S.C. §103

The subject matter of dependent claim 4 was rejected under 35 U.S.C. 103(a) as obvious over Roe in view of U.S. Patent No. 5,857,983 to Douglas et al. (hereinafter Douglas). The deficiencies of Roe were noted above. Applicants respectfully submit Douglas does not overcome those deficiencies and that dependent claim 4 is, therefore, allowable for at least the same reasons as discussed above with respect to claim 1.

The subject matter of dependent claim 5 was rejected under 35 U.S.C. 103(a) as obvious over Roe in view of U.S. Patent No. 5,997,561 to Böcker et al. (hereinafter "Böcker"). Böcker was cited for teaching related to penetration depths. Applicants submit that Böcker does not cure the deficiencies of Roe noted above and that dependent claim 5 is allowable for at least the same reasons as discussed above with respect to the rejection of claim 1.

The subject matter of dependent claim 7 was rejected under 35 U.S.C. 103(a) as obvious over Roe in view of U.S. Patent No. 4,517,978 to Levin et al. (hereinafter "Levin"). Böcker was cited for teaching related to various. Applicants submit that Levin does not cure the deficiencies of Roe noted above and that dependent claim 7 is allowable for at least the same reasons as discussed above with respect to the rejection of claim 1.

### CONCLUSION

In view of the foregoing amendments and remarks, it is respectfully submitted that the application is in condition for allowance and applicants earnestly solicit early examination on the merits and issuance of a Notice of Allowance. Should the Examiner believe that any additional information or amendment is necessary to place the application in condition for allowance, he is urged to contact the undersigned Attorney via telephone at 408 956-4790, or facsimile number 408 956-4404.

The Commissioner is hereby authorized to charge any required fees due in connection with this submission, and to credit any overpayment, to Deposit Account No. 10-0750 (Docket LFSS902USNP/MM) (Johnson & Johnson).

Respectfully submitted,  
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